

STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DOCKET NO. PL11HB-63842

Yvonne Ware and Craig Sashihara,)
Director of the New Jersey Division)
on Civil Rights,)
)
Complainants,)
)
v.)
)
Navgrah, LLC, d/b/a Mark Variety Store,)
)
Respondent.)

Administrative Action

FINDING OF PROBABLE CAUSE

Mr. Yvonne Ware (Complainant), a Trenton resident, is legally blind and uses a guide dog.¹ Mr. Ware filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that Mark Variety Store (Respondent) denied him service at a place of public accommodation because of his disability. Respondent denied the allegations of disability discrimination in their entirety. After reviewing his agency's investigation, the DCR Director now finds, for the purposes of this disposition only, as follows.

Ware's guide dog, "Ocho," was trained at Guiding Eyes for the Blind in New York. Guiding Eyes for the Blind is a nonprofit guide dog school that, among other things, provides the blind and visually impaired with trained guide dogs, and provides them with training in using guide dogs as well as other support services.

Mark Variety Store is a retail store located in Trenton, New Jersey, owned and operated by Harshad Desai. There is no dispute that on October 20, 2012, Ware entered the store with his guide dog to shop, and Desai asked him to take his guide dog out of the store. The parties

¹ The Director of the Division on Civil Rights hereby intervenes as a complainant in this matter in the public interest pursuant to N.J.A.C. 13:4-2.2 (e). However, for purposes of this determination, the term "Complainant" will refer solely to Mr. Ware.

also agree that Complainant had shopped at the store with his guide dog in the past without any problems. The parties disagree about other aspects of the incident.

In its position statement, Respondent contends that on the date in question, Desai asked Ware to remain outside with his guide dog because the store was extremely busy with customers due to a lottery drawing that evening. Respondent asserts that Desai asked Complainant to remain outside the store only because he wanted to ensure a safe environment for Complainant, his guide dog and the customers in the store. Respondent contends that Desai offered to bring outside any merchandise that Complainant wished to purchase.

Ware disputed Respondent's claim that the store was extremely busy, and said that there were "maybe two customers" in the store during the incident. He told DCR that he went to the store to buy a soft drink while waiting for a bus, and that Desai never offered to bring anything outside for him. He stated that Desai told him that his guide dog was no longer allowed there, and gave him no reason for denying him access.

Ware stated that neither he nor his fully-trained guide dog had ever given Desai any reason to expect that they would cause a disruption or be a potential safety risk in the store. He asserted that even if the store had been crowded—and he claims it was not—Desai had no reason to assume that Complainant or his guide dog presented any more of a potential safety threat than any of Respondent's other customers.

The New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49, makes it illegal to discriminate against a person because he or she has a disability and is accompanied by a guide dog. The LAD states:

Any person with a disability accompanied by a service or guide dog trained by a recognized training agency or school is entitled, with his dog, to the full and equal enjoyment, advantages, facilities and privileges of all public facilities, subject only to the following conditions:

- a. A person with a disability, if accompanied by a service or guide dog, shall keep such dog in his immediate custody at all times;

- b. A person with a disability accompanied by a service or guide dog shall not be charged any extra fee or payment for admission to or use of any public facility;
- c. A person with a disability who has a service or guide dog in his possession shall be liable for any damages done to the premises of a public facility by such dog.

[N.J.S.A. 10:5-29.]

The LAD defines guide dogs as seeing-eye dogs or hearing-ear dogs “trained by any organization generally recognized by agencies involved in the rehabilitation of the blind or deaf as reputable and competent to provide dogs with training of this type.” N.J.S.A. 10:-5(s).

Here, Respondent does not question whether Mr. Ware has a disability or whether Ocho qualifies as a trained guide dog. Nor does Respondent assert that Ware or Ocho caused any disturbance, damage, or other problem on this or other occasions. Rather, Respondent argues that his safety concerns justified keeping Complainant and his guide dog out of the store.

Respondent’s argument is unpersuasive. The LAD states that a person with a disability is “entitled, with his dog, to the full and equal enjoyment, advantages, facilities and privileges of all public facilities.” N.J.S.A. 10:5-29. Thus, any public facility, including a retail store, which imposes a blanket or pre-emptive requirement that service or guide dogs must remain outside the premises is in violation of the LAD.

The issue of service animals is also governed by the Americans with Disabilities Act (ADA). The U.S. Department of Justice, which enforces the ADA in public accommodations, issued a guidance document that addresses the safety issue raised by Respondent. See U.S. Dept. of Justice, Civil Rights Div., “Service Animals,” ADA Revised Requirement (2010). In particular, the DOJ guidance document states that a person with a disability can be asked to remove the service animal from the premises if the animal is out of control and the handler fails to take effective action to control it, or the dog is not housebroken. Ibid. However, a general fear of dogs is not a valid reason for denying access or refusing to serve people using service

animals. Ibid. Here, there was no allegation or evidence that Complainant's dog was in any way out of control.

The LAD also makes it illegal for any "owner, lessee, proprietor, manager, superintendent, agent, or employee of any place of public accommodation directly or indirectly to refuse, withhold from or deny to any person any of the accommodations, advantages, facilities or privileges thereof, or to discriminate against any person in the furnishing thereof" on the basis of disability. N.J.S.A. 10:5-12(f). The LAD defines "place of public accommodation" broadly, to include any "retail shop, store, establishment, or concession dealing with goods or services of any kind; any restaurant, eating house, or place where food is sold for consumption on the premises." N.J.S.A. 10:5-5(l).

The Director finds that Respondent qualifies as a place of public accommodation and that Complainant is a person with a disability who was denied "accommodations, advantages, facilities or privileges thereof." Just as Respondent could not lawfully refuse to serve a customer unless he agreed to leave his cane, wheelchair, or medication outside the store, its conduct toward Complainant amounted to disability discrimination.

At the conclusion of an investigation, the Director is required to determine whether "probable cause" exists to credit a complainant's allegation of discrimination. Probable cause for purposes of this analysis means a "reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief that the [LAD] has been violated." N.J.A.C. 13:4-10.2. A finding of probable cause is not an adjudication on the merits but merely an "initial culling-out process" whereby a preliminary determination is made that further action is warranted. Sprague v. Glassboro State College, 161 N.J. Super. 218, 226 (App. Div. 1978). If the Director determines that probable cause exists, the matter will proceed to a hearing on the merits. N.J.A.C. 13:4-11.1(b). If, on the other hand, the Director finds there is no probable cause, that finding is deemed to be a final agency order subject to

review by the Appellate Division of the Superior Court of New Jersey. N.J.A.C. 13:4-10.2(e); R. 2:2-3(a)(2).

In view of the above, the Director finds that there is a "reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief that" Respondent violated the LAD on two separate grounds: N.J.S.A. 10:5-29 (denial of access to public facility to a person with a disability accompanied by a guide dog) and N.J.S.A. 10:5-12(f) (disability discrimination in a place of public accommodation).

THEREFORE, it is determined and found that probable cause exists to credit Complainant's allegations of discrimination.

DATE:

9-3-14



Craig Sashihara, Director
NJ DIVISION ON CIVIL RIGHTS